

Special Education

How can a student in state care be referred for a special education evaluation?

At any time during the child's placement, if the DCFS Child and Family Team, JJS, or the parent has reason to suspect that the child may have a disability requiring special education services, a request for an evaluation may be initiated to determine eligibility under the Individuals with Disabilities Education Act (IDEA). DCFS/JJS are committed to ensuring that children obtain an education adequate to their needs and abilities. The caseworker is responsible for communicating with the school and tracking the child's educational performance.

If caseworkers or out-of-home caregivers have concerns about the educational performance of a student in state care, they should initiate a request for an initial special education evaluation to the school administrator.

How are the needs of students accessing special education services addressed while they are in state care?

Students with disabilities in state custody should continue to receive special education and related services according to their current IEP regardless of where they are placed by DCFS or JJS.

Special education records must be requested, reviewed, and transferred with the student, both when they enter and leave state care to ensure continuity of educational services and the provision of a free, appropriate public education.

The IEP must be reviewed and revised at least annually and address the student's educational needs. An IEP team determines the appropriate placement for the student.

How is a student's IEP affected when they are placed in state care and change schools?

If the child has an IEP, the new school district, in consultation with the parents (i.e., someone who meets the IDEA definition of a parent) must provide services comparable to those in the IEP, until the new school district adopts the IEP or develops and implements a new IEP.

Special education records are generally maintained separately from other educational records. Unless specifically requested, special education records may not be transferred with other educational records. Caseworkers and receiving schools/programs should routinely request special education records for students, to ensure that they are not missed during records transfers. Students placed in YIC programs still retain the right to a free, appropriate public education (FAPE) under IDEA and should receive special education and related services as per a current IEP.

Are children in care ages 0-5 eligible for special educational services?

Early intervention services (e.g., Utah Department of Health, Baby Watch) are available for children ages birth to three. The IDEA requires that by age three, children who are eligible under IDEA have an IEP developed and implemented by the school district.

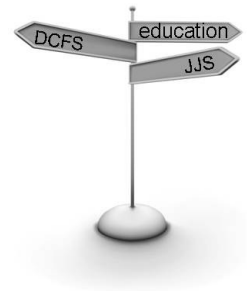
Children in care can also access Headstart and Early Head Start programs if necessary. Head Start is a federally funded preschool program targeting children in low-income families to help prepare them for school; however, children in care, regardless of income, are eligible.

Who serves as the parent regarding special education decisions?

The IDEA defines a “parent” to include:

- A biological, adoptive, or foster parent of a child.
- A guardian (but not the state if the child is in state care).
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare.
- An individual assigned to be an educational surrogate parent.

For students requiring special education services, someone who meets the definition of a parent (e.g., biological or foster parent) or an educational surrogate parent appointed by the school district must serve as the parent regarding educational decisions. The biological or adoptive parent, when attempting to act as the parent and when more than one person is qualified to act as the parent, must be presumed to be the parent unless the parent does not have the legal authority to make educational decisions for the student. Parents, if not able to attend meetings in person, may participate using alternate means, including conference calls and video conferencing.



While a judge may assign an educational surrogate parent, a judge may not assign an employee of the school district or an employee of a state agency involved in the education and care of the student to serve as the educational surrogate parent. It is the school district’s responsibility to protect the rights of the student with a disability who is in state care and assign an educational surrogate parent when needed. An educational surrogate parent has all the rights and responsibilities of a parent under IDEA.

Under federal law (IDEA), the caseworker may not sign as the parent for special education decisions such as consent for evaluation and initial placement, participation during evaluation, eligibility determination, IEP development, and placement review. However, the caseworker should also be involved in meetings, **but should sign as a participant and not as the parent**. Both the out-of-home caregiver and the caseworker should be provided with copies of educational records.